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NO. 1317

In The

Supreme Court of the United States

OCTOBER TERM, 1967

MAX B. GOLDBLATT,

Appellant,

v.

THE CITY OF DALLAS,

Appellee.

On Appeal from the United States District Court for the Northern District of Texas, Dallas Division

JURISDICTIONAL STATEMENT

JOSEPH A. DEVANY
Counsel for Appellant
1411 First National Bank Building
Dallas, Texas 75202

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JURISDICTIONAL STATEMENT

The appellant appeals from the judgment of the United States District Court for the Northern District of Texas, Dallas Division, entered on January 26, 1968, upholding the constitutionality of Section 21 of the Dallas City Charter, an amended portion of an act of the State Legislature of the State of Texas, and granting appellee's Motion for Summary Judgment. Appellant submits this Statement to show that the Supreme Court of the United States has jurisdiction of the appeal and that a substantial question is presented.

OPINION BELOW

The opinion, order, and judgment of the United States District Court for the Northern District

of Texas, Dallas Division, rendered on January 26, 1968, which is not yet reported, is attached hereto as Appendix A.

JURISDICTION

This action was brought by the appellant in the United States District Court for the Northern District of Texas, Dallas Division, to declare Section 21 of the Dallas City Charter unconstitutional and to enjoin the appellee from holding future City Council elections under the provisions of that section. A three-judge court, convened pursuant to 28 U.S.C. 2284, filed an opinion, order and judgment on January 26, 1968, denying appellant's complaint and granting appellee's Motion for Summary Judgment; appellant's notice of appeal was filed in the District Court on February 21, 1968. The jurisdiction of the Supreme Court to review the decision of the court below by direct appeal is conferred by 28 U.S.C. 1253 and 28 U.S.C. 2101.

QUESTIONS PRESENTED

Section 21 of the Dallas City Charter provides that three Councilmen shall be elected at large without regard to residence, while six other Councilmen shall be elected at large, each one of said six being required to reside in one of six separate districts of the City of Dallas. There is a small organized group within the City of Dallas which has perpetuated itself for thirty years by using

this election scheme and thereby denying each of the six districts of Dallas a representative who is duly elected by each of those districts. Therefore, the questions are:

1. Whether the broad principles protecting the right of suffrage enunciated in Reynolds v. Sims, 377 U.S. 533, and other cases, are applicable to municipalities.

2. Whether those principles, assuming their applicability at the local level, prohibit the use of an election scheme under which nine members of a city council are elected at large, six of whom must reside in and declare their candidacy from residence districts, each of which consists of approximately 140,000 persons, but which scheme has resulted in the perpetuation and preserving of control of such city council by one all-powerful group without interruption for thirty years.

3. Whether an invidious discrimination results under constitutional standards where a small group of business leaders is permitted under an election scheme to use an economically controlled bloc vote to perpetuate and preserve its control of city government for thirty years.

STATUTE INVOLVED

Section 21 of Chapter IV of the Dallas City Charter, which is an act of the State Legislature of the State of Texas, provides as follows:

"Sec. 21. OFFICIAL BALLOT — ELECTION. The City Secretary shall make up the offiicial ballot from the names presented to him in the manner hereinabove set out. The order in which the names of the candidates for each place shall appear on the ballot shall be determined by lot, in a drawing held under the supervision of the City Secretary. The election shall be held in conformity with the election laws now in force in the City of Dallas, or with those that may be hereafter enacted. All members of the City Council shall be elected by a vote of the qualified voters of the City of Dallas at large. All qualified voters in the city shall be entitled to vote for candidates for each place number. The candidate for Councilman receiving a majority of all votes cast as provided in Section 20 hereof, for the position of Councilman under the place number under which his name appears shall be declared the duly elected Councilman to hold said position."

STATEMENT

Max B. Glodblatt, appellant herein, is a resident of the City of Dallas, having his home in what is described as District C of the City. He was a bona fide candidate for the nine-man city council, Place 3 (this being the council place designation for District C) in the April 4th, 1967, city council elections. The pertinent provision of the election law at issue here is Section 21 of the Dallas City Charter, which section is an amended portion of an act

of the State Legislature. That section basically provides for what may for convenient reference hereinafter be called the SIX-THREE PLAN. Three councilmen are elected at large without regard to residence, while six councilmen are elected at large, each one of said six being required to reside in one of six districts of the city. The districts are six divisions of the City of Dallas populated as follows:

District A	139,349
District B	140,221
District C	138,288
District D	139,138
District E	137,235
District F	135,184

(These figures are official estimates by the city as of 1964, no later figures being available. The reader may assume there had been some growth in each of these areas between 1964 and 1967.)

The results of the election on April 4th, 1967, in regard to the appellant's race disclose that he lost city-wide by a vote of 14,429 to 9,009, but actually was the choice of the voters in District C by a vote of 2,192 to 1,287, Max B. Goldblatt receiving 63% of the votes cast for Place 3.

It should be further noted that there exists in the City of Dallas an organization known as the Citizens Charter Association (C.C.A.). This organization selects slates to run in each election, which

slates are totally endorsed by both Dallas newspapers prior to each election. An elaborate system of financial support backs the slate and a public relations firm is employed to handle the advertising and image factors. It must be noted that a number of authoritative books and articles have been written which reliably show that there is a power structure in the City of Dallas named the Dallas Citizens Council consisting basically of eight key leaders at the top and a few others who are heads of financial institutions and other multimillion-dollar enterprises.[1] There is an overlapping in membership of the Dallas Citizens Council and the Citizens Charter Association. This group has dominated the Dallas City Council without interruption since the election of 1939.[2]

Under the Six-Three Plan, each District votes for every candidate. One District may wish to select as its reresentatives a particular candidate, as District C did in respect to Max B. Goldblatt, but the other five districts, which may not be concerned with the wishes of District C, can offset this choice. And thus each District can in turn be

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1 "The Decision-Makers" by Carol Estes Thometz (1961); "Dallas Public and Private" by Warren Leslie (1964); "Group of Businessmen Rules Dallas Without a Mandate from the Voters" by Jack Langguth, appearing in The New York Times, January 19, 1964; "How Business Failed Dallas" by Richard Austin Smith, appearing in Fortune magazine, July, 1964. This list is not intended to include all such books and articles, but is a representative selection of the most authoritative coverage on the power structure of Dallas.

2 A list of C.C.A. candidates since 1931 is presented in Appendix B together with a list of all winning candidates in each election. Sources: City records, microfilms of newspapers and literature published by the Citizens Charter Association.

defeated in its choice by five times its number of voters from the other five Districts. Therefore, the vote of District C, for example, is diluted by the combined votes of five other areas which are not close to the problems of District C. It should be noted here that the salary of a city councilman is twenty dollars per week conditioned that he attend the city council meeting on Monday of the week for which he is paid.[3] Virtually all of Monday is consumed by each councilman because of an early luncheon meeting he must attend before the City Council officially convenes at 2:00 P.M. Therefore, a candidate running for this office on his own is limited in the sum that can be practicably allotted for his campaign. However, those who compose the power structure support their entire slate financially and are able to effect a solid bloc of votes throughout the city. The scheme has perpetuated the same domination of the City Council for thirty years.

One particular article of pertinent interest appearing in Fortune magazine, July, 1964 issue, beginning at page 157, is worthy of mention. It is entitled "How Business Failed Dallas," by Richard Austin Smith. The article is impressive because of those quoted therein.

It asks the question: "— how much power should be held, and for how long?"

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[3] Section 11, Dallas City Charter.

> . . . this criticism of Dallas' business leadership has broadened and deepened . . . What had been good for Dallas in 1940 when it was a city of 295,000 came under question as inappropriate for a metropolis of 750,000. . . . Their view was that too few people — the business leadership — were doing too much for too many; a self-perpetuating oligarchy of businessmen, unreachable by the hundreds of thousands of Dallasites, was sitting in a self-elected caucus making decisions that affected the political, cultural, economic, and social life of the whole community.

Quotations from this article follow:

Mr. Stanley Marcus, president of Neiman-Marcus and a member and past president of the all-powerful Dallas Citizens Council:

> There is no municipal graft in Dallas, no fixed traffic tickets, no dishonesty, no pull with any of the city offices. Things cannot be fixed up by the mayor's office. There is just no place you can go or must go for a payoff, as in many other cities. People here want to run an honest and a safe city, with a safe Board of Education. But when you get such safety you are apt to get sterility and a lack of progress. This is the price you pay. Our leadership has been singularly lacking in men of wealth who have a genuine concern for intellectual freedom, like Will Clayton and Paul Hoffman. We just have had authoritative leadership that has given respectability to certain drives and causes, but not leadership for excellence in education and the arts. Now we have a large

but homogeneous group of businessmen intent on unity and conformity.

Dr. Willis M. Tate, president of Southern Methodist University and a member of the all-powerful Dallas Citizens Council:

> The business and financial group has an enormous enthusiasm for the development of the city but its dedication has often turned into fierce pride. Naturally, the business leaders have a vested background, slanted more toward the economic and industrial aspect than the real health of the city. They have rarely accepted the professional group in their councils and have been unaware of the vacuum this has created. There just isn't any free flow of ideas. They have talked themselves into a spirit that can only be compared to the spirit which pervades a campus before a football game. This has blinded them to shortcomings and valid problems. They have finally recognized the need for more Ph.D.'s in the city, but only the Ph.D.'s in engineering and science because they have seen the defense contracts go to Boston, California, and Chicago. There is a narrowness of objectives.

Rabbi Levi A. Olan, a leading Dallas religious leader:

> Today in Dallas the business leadership is largely interested in rebuilding the image of Dallas, not in making fundamental changes. Fifteen years ago the business leaders were dynamic men. They not only dominated the community as they do now, they built it with

vision and daring. To be sure, they had a sort of medieval, a feudal approach. But they understood power. They understood that power carries responsibility with it. The leaders today also seek to control, to dominate paternalistically. But they do not assume responsibility, they will not acknowledge the need for accountability. The business leadership rarely faces up to the real problems of the city. They dominate the social agencies and almost starve them. Most of our social services have been badly neglected: our treatment of the poor, our handling of the high school dropouts — 30 per cent of all white students, 50 per cent of the colored — our aid to the aged. In our aid to dependent children, Texas is one of the lowest of all states. (In 1963 the average Texan was out of pocket only 40 cents per year for such aid compared to a national average of $3.18.) The city in the past had some big men who laid solid foundations for growth. We do not seem to have them today in quite the same measure. They appear to be satisfied with the second best in many areas of our life, especially the arts and social agencies. Our university is starved; Southern Methodist University has to beg for nickels. We have few real academicians. The city boasts of great wealth, high fashion, fabulous buildings, and palatial homes. Yet one-fifth of the residential area is a slum officially condemned as unfit for human habitation.

Dr. Douglas Jackson, a Doctor of Theology at Southern Methodist University:

Under the present business leadership smaller groups concerned with a variety of Dallas

> community interests are deprived of the feeling of representation or participation in the decision-making process. They are deprived of means to make their problems known and make them count. The leadership is a paternalistic structure which makes it difficult if not impossible for the individual to be represented and take part in decisions that concern him. Small groups have no means for being listened to or heard. These small groups cannot bring their problems to the attention of the decision makers with any force or support and they cannot take any part in the decisions because the leadership is an informal and unofficial body.

The article further states: "The fact of the matter is that Dallas' business leadership has no parallel anywhere in the U. S." The mechanism of power consists of three distinct but interlocking entities, the Dallas Citizens Council, the Dallas Assembly and the Dallas County Screening Committee. This article contains a 1964 roster of the Dallas Citizens Council which includes the top executives of both Dallas' daily newspapers.

Appellant contends that no set of facts, regarding full and fair participation in government, yet submitted to any tribunal in this nation constitutes a stronger indictment of a system of perpetual control, than does the case at hand.

For thirty years the decision-makers of Dallas have controlled Dallas City Government. Countless articles and books have been written on the subject, too numerous to list, but a fact which cannot

be ignored. The people of Dallas are drifting into a hopeless state of apathy over city council elections. Enthusiasm in one District in support of a candidate ostensibly representing that District becomes pointless when five other Districts, subjected to the most professional and subtlest methods of persuasion and confusion, cast their ballots on at-large basis. The subtle but effective scheme here involved, which results in an invidious discrimination against representatives of the people, is a violation of a federally protected right to vote and have that vote count.

"Any restrictions on that right strike at the heart of representative government." "History has seen a continuing expansion of the scope of the right of suffrage." "Other rights, even the most basic, are illusory if the right to vote is undermined." "We must be ever aware that the Constitution forbids sophisticated as well as simple-minded modes of discrimination." (Quotations are from cases hereinafter cited.)

One cannot demonstrate the denial of suffrage which has developed under a law without looking at the results of the application of that law. Dallas at present consists of approximately 840,000 residents based on figures obtained from the census bureau. Appellant would show that Dallas has a paternalistic system which pays lip service to the voting processes. As a result, public apathy has developed to an appalling extent. Last April 4, 1967, some 23,000 persons voted in the city council

election out of a possible registration of city voters totaling 222,002. Slightly more than 10% of the registered voters went to the polls. Less than 3% of the total population of Dallas decided the election. Approximately 5% of the adult citizens who are old enough to vote actually voted. The consequences of a bad election law are all too clear. It stifles a society. Wholesome economic growth of a community results from a free exchange of ideas. Unless our founding fathers were completely wrong, democracy — not paternalism — is the finest system of government devised by man — for it benefits *all* the people.

A law which permits the defeat of a democratic form of government must be struck from the books.

We enjoy one especially significant fact in considering the case at hand; we have a historical record of the results of Section 21 of the Dallas City Charter: Controlling majorities in all but two of the nineteen city administrations since 1931, the date Section 21 was adopted, have been nominated and elected by the Citizens Charter Association. The two administrations not dominated by the Citizens Charter Association resulted from the elections of 1935 and 1937, before the formation of the all-powerful Dallas Citizens Council. Therefore, since 1939 to and including the present administration (1967-1969) Dallas has had thirty years of uninterrupted control of its governing body by the power structure" (Appendix B).

These results bring us to the question raised by the Supreme Court in Dusch v. Davis, 387 U.S. 112: is it ". . . time enough to consider whether the system still passes constitutional muster."

The trial court on December 7, 1967, ordered the appellant to submit a list of witnesses and what facts he intended to develop from such witnesses. Pursuant to such order, the appellant on January 15, 1968, submitted his list of witnesses. The appellee filed a motion for summary judgment in effect contending that notwithstanding anything that appellant had contended, he did not state a cause of action. At a hearing before the trial court on January 23, 1968, the appellee's motion for summary judgment was granted and appellee was permitted to file an answer to appellant's proposed facts to be developed. The appellee did so on the next day, January 24, 1968, in affidavit form denying everything and anything that appellant would seek to prove upon a trial of this cause. The appellant contends that the facts he intends to prove, which are now in issue, do constitute a cause of action and upon a trial on the merits would result in judgment in his favor.

THE QUESTIONS ARE SUBSTANTIAL

I. Jurisdiction and Venue.

No question has been raised at any point in the proceedings concerning the jurisdiction of a three-judge district court; and no question has been

raised concerning venue. Jurisdiction was grounded on 28 U.S.C. 2281.

II. Appellant Has Been Denied His Constitutional Rights.

Section 1 of the Fourteenth Amendment to the Constitution provides

> . . . No state shall . . . deny to any person within its jurisdiction the equal protectionof the laws.

A municipality is a political subdivision of a state to implement State legislation and State policies and to provide governmental services on a local level. The Dallas City Charter was enacted in 1907 as a Special Act of the State Legislature of the State of Texas. Any amendments to that act do not remove the initial grant of power from the state. No serious question can in fact be raised as to the general applicability of the Equal Protection Clause to governmental units subordinate to the State. Actions of such subordinate governmental units have traditionally been regarded as constituting "State Action" for purposes of the Fourteenth Amendment. In Standard Computing Scale Co. vs. Farrell, 249 U. S. 571, 577, the Court plainly stated:

> For the protection of the Federal Constitution applies, whatever the form in which the legislative power of the state is exerted: that is, whether it be by a constitution, an act of the legislature, *or an act of any subordinate instrumentality of the State exercising delegated legislative authority,* like an ordinance of a

> municipality or an order of a commission . . . (Emphasis added.)

In Cooper v. Aaron, 358 U. S. 1, 16-17, in response to a contention that the actions of a local school board were insulated from constitutional scrutiny, the Court stated that "the prohibitions of the Fourteenth Amendment extend to all action of the State denying equal protection of the laws; whatever the agency of the State . . . or whatever the guise in which it is taken . . ." Thus, what a State cannot constitutionally do directly, through its legislature, it cannot accomplish indirectly through the delegation of powers to political subdivisions. In Gomillion v. Lightfoot, 364 U. S. 339, 344, the Court concluded that a State does not have "Plenary power to manipulate in every conceivable purpose, the affairs of its municipal corporations . . ." Summarizing, the Court stated (id. at 347):

> When a State exercises power wholly within the domain of state interest, it is insulated from federal judicial review. But such insulation is not carried over when state power is used as an instrument for circumventing a federally protected right.

Under these and a number of other pertinent authorities, it has been established that governmental action on the local level, no less than on the State level, constitutes a subject appropriate for constitutional scrutiny under the Equal Protection Clause. Therefore, on the question of the fed-

erally protected right to vote, it would seem to make little difference whether the complaint involved representation at the legislative level or, instead, one involving representation on a city council.

It is significant to note that the Court has never held the Equal Protection Clause inapplicable to local government. In all cases which might be relied upon by counsel for the defense, the Court has noted probable jurisdiction.

Significantly, the conclusion reached by an overwhelming number of courts which have considered the matter is that the principal of Reynolds applies no less at the local than at the State level of government. At least seven State courts of last resort which have considered the question have reached that conclusion,[4] and provide convincing support for the position here taken. Both the tide of decision and the analysis and reasoning which have led the State courts in this direction argue persuasively, we submit, that this Court should approve and endorse the efforts being made to give vitality and consistent application to the principals enunciated in Reynolds. (Avery v. Midland County, — U. S. —, decided April 1st, 1968).

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[4] California, New York, Wisconsin, Minnesota, Maryland, Missouri and South Dakota, in the following decisions: Miller v. Board of Supervisors, 405 P. 2nd 857 (Calif. Sup. Ct.); Seaman v. Fedourich, 209 N. E. 2nd 778 (N. Y. Ct. App.); State ex rel. Sonneborn v. Sylvester, 132 N. W. 2nd 249 (Wis. Sup. Ct.); Hanlon v. Towey, 142 N. W. 2nd 741 (Minn. Sup. Ct.); Montgomery County Council v. Garrott, 222 A. 2nd 164 (Md. Sup. Ct.); Armentrout v. Schooler, 409 S. W. 2nd 138 (Mo. Sup. Ct.); Bailey v. Jones, 139 N. W. 2nd 385 (S. Dak. Sup. Ct.)

III. Section 21 Of The Dallas City Charter Has Resulted In An Election Scheme Which Is Unconstitutional.

In Wesberry v. Sanders, 376 U. S. 1, 17, the Court stated:

> No right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live. Other rights, even the most basic, are illusory if the right to vote is undermined. Our Constitution leaves no room for classification of people in a way that unnecessarily abridges this right.

In the Reynolds case the Court refers to the Wesberry case as having "clearly established that the fundamental principle of representative government in this country is one of equal representation for equal numbers . . ." (377 U. S. at 560-561).

The actual holding on Reynolds v. Sims was that "the Equal Protection Clause requires that the seats of both houses of a bicameral state legislature must be apportioned on a population basis." (377 U. S. at 568). But the Court's opinion expresses the basic constitutional concepts in such a way as plainly to encompass apportionment, representation and the right to vote at the local, as well as the State, level of government. Early in its Reynolds opinion the Court struck the note it was to follow consistently throughout (377 U. S. at 555):

> The right to vote freely for the candidate of one's choice is of the essence of a democratic society, and *any restrictions on that right*

> *strike at the heart of representative government. And the right of suffrage can be denied by a debasement or dilution of the weight of a citizen's vote* just as effectively as by wholly prohibiting the free exercise of the franchise. (Emphasis added.)

A scheme to control a local government by diluting the vote of each District of that city by five times "strike(s) at the heart of representative government" at the local level no less than in the election of State legislators.

As the Court in Reynolds stated (id. at 565):

> . . . each and every citizens has an inalienable right to full and effective participation in the political processes of his State's legislative bodies. . . . Full and effective participation by all citizens in state government requires, therefore, that each citizen have an equally effective voice in the election of members of his state legislature. . . .

In the writer's view, the full and effective participation of millions of Americans in representative government at the local level requires that they have an equally effective voice in the election of the members of local bodies. The Six-Three Plan in the case being considered has developed into one of the most intricate and subtle methods of vote dilution yet devised by man. For, in actuality, each of the six districts of the City of Dallas is effectively denied a representative on the city council. A single district consisting of some 140,000 persons

has many problems of its own which need consideration at the city council level. What kind of representation can be had from a candidate defeated in his own district, but who is elected on an at-large basis through massive advertising and supported by a built-in vote representing the power structure of the city? The argument is seriously made by some that elections by districts of candidates who are the people's choices and who are best known to those from the district they would represent will lead to evils. It is difficult to believe that this argument comes from fair-minded persons. However, in respect to those who advocate it, we here refer them to the fact that the city manager form of government and the safeguards contained in the Dallas City Charter, particularly Sections 28 and 29, preclude any dangers of ward-type politics. If candidates are going to be beholden to their supporters, there is far greater danger that a C.C.A. sponsored candidate will be beholden to the power structure of Dallas which elects him, than will a councilman, representing 140,000 persons in a district of the city, be beholden to anyone but those 140,000 persons. One merely has to reflect on the impossibility of pleasing 140,000 persons as against the possibility of acquiescing to the dictates of a small, well organized group of businessmen who meet and make decisions and recommendations for the governing body.

Under and since Baker v. Carr, 369 U. S. 218-226, 228-229, it has been the Equal Protection

Clause which has provided the constitutional touchstone for assaying the fairness of the relationship between the composition of a governmental body and the individual voter. It is the right to vote for members of a representative body which is given Fourteenth Amendment protection in the Reynolds case.

Local governments have always been of critical importance in our democratic system. The town meeting in colonial New England is perhaps the earliest example of American government at the local level. De Tocqueville praised local self-government in the United States as follows:

> Local assemblies of citizens constitute the strength of free nations. Township meetings are to liberty what primary schools are to science; they bring it within the people's reach; they teach them how to use it and how to enjoy it. A nation may establish a system of free governments but without the spirit of municipal institutions, it cannot have the spirit of liberty. (DeTocqueville, Democracy in America, ch. 5, quoted in 1 McQuillin Municipal Corporations, 330 (1949).

Many other great works have stressed the importance of local self-government in which the citizens participate enthusiastically. When the people are no longer permitted to perform this task for themselves, then the most fundamental of our democratic institutions, local government, is weakened. Local government is not merely important

because it is closest to home; it also has great and growing practical effect on the daily lives of citizens. A failure at the local level will bring forth quick response from the people who have representatives actually running it. But local government representing the rule of a handful of men can easily be used to cover failures, for then the people are not part of government and do not know of failures which affect their tax dollars and their personal safety. Given enough money, a public relations expert can sell just about anything to the public through the use of newspaper articles, proper news coverage, T-V shows, 'idiot cards', colorful and well lighted billboards, and other paraphernalia now used. But the people are not part of the government unless they are able to select *their* representatives in government. No greater discovery has ever been found concerning any solution or law affecting hundreds of thousands of people, than the acid test of exposure to public debate, public criticism and a free press. People should govern themselves; they should not be governed by any well-to-do civic leaders no matter how benevolent their intentions. The perpetual control over local government in Dallas for more than a generation has resulted in an actual loss of control by the people for it has been found by one researcher[5] that the City Council actually awaits the decisions and instructions of those who rule the city. Spokesmen for the ruling group have actually

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[5] Pages 34 and 40, The Decision-Makers, supra (footnote 1).

given statements to writers and reporters on how the system works and the need for members of the ruling group to be "yes" or "no" men.[1] There is no secret about the matter.

Dallas is indeed at the crossroads. It must give the reins of government back to the people. There are 840,000 reasons why this must be done — all in the name of freedom.

Viable government at all levels is the plainest requisite of our complex society. The growth of federal functions emphasizes, rather than lessens, our dependence on the effective exercise of governmental power at the State and local levels. Decentralized government is not a relic of the nineteenth century; it remains essential to the philosophy and practice of democracy. Local governments have responsibility over law enforcement, the administration of justice, correctional institutions, public hospitals, welfare, public education, libraries, sanitation, fire protection. streets, local transportation, sewage, leasing and building codes, zoning, parks and recreation, and myriad other matters. These areas constitute the very marrow of community life — education for children, security for families, the phys-

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[1] "The Decision-Makers" by Carol Estes Thometz (1961); "Dallas Public and Private" by Warren Leslie (1964); "Group of Businessmen Rules Dallas Without a Mandate from the Voters" by Jack Langguth, appearing in The New York Times, January 19, 1964; "How Business Failed Dallas" by Richard Austin Smith, appearing in Fortune magazine, July, 1964. This list is not intended to include all such books and articles, but is a representative selection of the most authoritative coverage on the power structure of Dallas.

ical make-up of the neighborhood, and necessary public services and utilities. At the same time, property taxes, still the principal source of funds for most local governments, are of great importance to homeowners, tenants, and businessmen. Decisions as to these local matters, which are so vital to daily living, may frequently be of greater immediate significance to citizens than determinations made in the State capitol or in Washington.

The complexity of life in densely populated urban areas, Dallas ranking fourteenth in the nation based upon the 1960 census, has led to new and difficult problems, and to the development of new local governmental programs relating to slum clearance in certain areas, urban renewal, public housing, welfare and poverty, public health, mass transportation, water and air pollution, juvenile delinquency, land-use planning, and the like. The federal government has been directing increasingly large amounts of funds to deal with these problems either through the States or directly to local governments. The ability to solve them, however, clearly depends on the vigor and effectiveness of government at the local level.

Another significant consideration involves annual expenditures. Dallas has a budget in excess of one hundred million dollars annually and this budget increases significantly with each administration. The national rate of increase for city governments is eight per cent a year, faster than federal expenditures increase.

In the Reynolds decision, 377 U. S. at 567, the Court pointedly stated:

> The complexions of societies and civilizations change, often with amazing rapidity. A nation once primarily rural in character becomes predominantly urban. Representation schemes once fair and equitable become archaic and outdated. . . .

Improper representation on a City Council almost invariably results in substantially less responsiveness to the various boroughs or districts of the cities.

This problem of lack of true representation on the city council was virtually admitted by the city councilmen when, on July 31, 1967, *six days after* appellant filed this suit, they announced their intentions to hold 'town hall' meetings on a regular monthly basis throughout the city. The Dallas Times Herald on that date in a front page story reported as follows:

> The purpose of the meetings proposed last week by Councilman William Cothrum would be to bring the government closer to the people. Expressing support for the proposal Monday were Councilmen McKinney and Frank Hoke. Mayor Erik Jonnson has already endorsed the meetings as have Councilmen Charles Cullum, Mrs. Sybil Hamilton and Jack Moser. The mayor said the idea may be "exactly what we need in *many many* ways." (Italics added to emphasize the use of the word 'many'

> twice.) . . . On the meetings in general, McKinney said, "If we go out into the community with a desire to help these people and understand their problems, I think the sincerity would be appreciated." . . . Moser said he's "very enthusiastic" about the proposed meetings. "It would bring the City Council much closer to those people who don't now have an opportunity to come to us with their problems." . . . Hoke endorsed the proposal by saying, "Anything we can do to have better communication with the people, the better off we are."

These words from the mouths of city councilmen after this suit was filed express clearly the lack of representation on the city council by the people themselves. It is clear that, if local governments are to cope meaningfully with the grave problems of modern urban America, all citizens must be fairly and fully represented in the local governing bodies. If decisions are to be made in the truly democratic tradition, they must be made by governing bodies which are truly representative, are sensitive to the needs of the affected divisions of the city, and are committed to an unrelenting search for solutions. The needs are far too pressing to engage in the wasteful luxury of stalemate and ineffective, unrepresentative local government.

We do not suggest that a scheme of at-large elections with district residence requirements is, ipso facto, unconstitutional. Such a scheme, with-

out more being shown, is not per se invalid. Reed v. Mann, 237 F. Supp. 22 (N. D. Ga.). Our submission is, rather, that when such a scheme exists — and continues over a period of time which may be considered a fair test of its validity — which results in a continuing, growing power structure of alarming proportion, and with the resulting bloc vote that it becomes virtually impossible for a candidate not a member of the power structure, or one who rejects its support because of his desire to truly represent the people, to win a place on the council, *then* that scheme has reached the limits of constitutional permission and should be struck down as violating the right of the people to be represented in government.

We come now to the concluding portion of this brief. We have found continual references in the court's decisions to schemes which deny the sacred, federally protected right to vote. The Supreme Court and other courts have used glowing descriptions of this right and the importance of protecting it. We feel compelled to emphasize that the mere scheme of the Dallas Six-Three Plan in and of itself may not exceed constitutional limitations, but the use to which this scheme has been put in the City of Dallas has made it impermissible. It is the abuses by men which often make new laws necessary to protect freedoms.

We believe that a pertinent highlight was reached by the Supreme Court on May 22, 1967,

when, in its decision in Dusch v. Davis, 387 U. S. 112, it included the statement of the District Court below which it affirmed:

> The 'Seven-Four Plan' (similar to the Six-Three Plan in the case at hand) is not an evasive scheme to avoid the consequences of reapportionment *or to perpetuate certain persons in office.* The plan does not preserve any controlling influence of the smaller boroughs, but does indicate a desire for intelligent expression of views on subjects . . . *As the plan becomes effective, if it then operates to minimize or cancel out the voting strength of racial or political elements of the voting population,* it will be time enough to consider whether the system still passes constitutional muster." (Emphasis added)

It should be noted that in the Dusch case the Seven-Four Plan is almost identical in principle to the Dallas Six-Three Plan, but in the Dusch case, *the plan represented a brand new law* which had had no abuses.

Certainly Dallas could not have known in 1930 when it passed the election law in question that it would lead to the abuses we have demonstrated — the perpetuation of a power group in office — the overriding by five districts over the wishes of the sixth district. As the court said in the Dusch case:

> As the plan becomes effective, if it then operates to minimize or cancel out the voting

> strength of racial or political elements of the voting population, it will be time enough to consider whether the system still passes constitutional muster.

What could the court have meant by these plain words other than if over a period of time the election scheme operated to cancel out the voting strength of a political element of the voting population, it would be time to consider if the system passes constitutional muster? District C is a political element of the voting population. The power structure of Dallas has used the system to perpetuate themselves in office by using their bloc vote to vote *nine times* in each city council election.

If ever there was a case which met the conscience of the Court, the case at hand meets the conscience of the Supreme Court in the Dusch case. The Dallas election law does not pass constitutional muster because the people are effectively denied representation by an invidious discrimination against their choices.

We submit that the time has come to consider whether the system which governs the City of Dallas passes constitutional muster. Appellant further contends that this control will continue indefinitely unless the people in each section of the city are given an opportunity to make their vote count. In a free nation where wealthy men may assemble and use their wealth to control, the people of each district of the six districts of Dallas must

be given the opportunity to elect a representative and not be thwarted by the concentration of a bloc-vote system which overrides district lines.

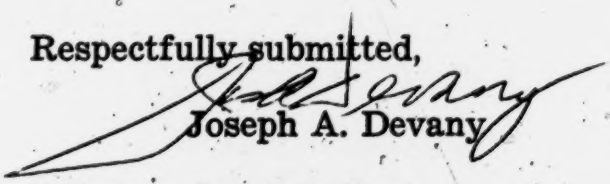
As one of the founding fathers of our nation stated:

> "I know no safe depository of the ultimate powers of society but the people themselves; and if we think them not enlightened enough to exercise their control with a wholesome discretion, the remedy is not to take it from them, but to inform their discretion by education."
>
> — Thomas Jefferson
>
> (Letter to William Charles Jarvis dated September 28, 1820.)

CONCLUSION

It is submitted that the questions presented by this appeal are substantial and of public importance, requiring plenary consideration by this Court.

Respectfully submitted,



Joseph A. Devany

Attorney for Appellant

1411 First National Bank Building
Dallas, Texas 75202

CERTIFICATE OF SERVICE

I, Joseph A. Devany, the attorney for the appellant, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the 4 day of April, 1968, I served a copy of the foregoing Jurisdictional Statement on the appellee by depositing a copy in the United States mail as certified mail with postage prepaid and addressed to the attorney of record for said appellee as follows: N. Alex Bickley, 501 City Hall, Dallas, Texas 75201

Joseph A. Devany

APPENDIX A

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS DALLAS DIVISION

MAX B. GOLDBLATT

v.

THE CITY OF DALLAS

No. CA-3-2159

(January 26, 1968)

Before Goldberg, Circuit Judge, and Estes and Hughes, District Judges.

ESTES, District Judge:

Plaintiff, Max B. Goldblatt, a qualified voter residing in Dallas and a candidate for City Councilman, Place 3, District C, in the April 4, 1967, City Council elections, in his Original Complaint demanded (1) that a preliminary injunction be issued by the three-judge court convened restraining the City of Dallas from enforcing the provisions of Section 21 of the Charter of the City of Dallas providing for at-large elections, with residence requirements for six of the nine councilmen; (2) a decree that Section 21 is unconstitutional and void

in its application to plaintiff, in that it denies plaintiff and all citizens in his district equal protection of the law in violation of Section 1 of the Fourteenth Amendment to the Constitution of the United States; and (3) permanent injunction, after trial on the merits, restraining the City from holding future elections under Section 21.

It is uncontroverted that the City of Dallas is governed by a charter enacted in 1907, as a special Act of the Legislature of the State of Texas. By a vote of the citizens of the City of Dallas, the Charter was amended in a city-wide election held in October, 1930. At this election, the voters adopted the council-manager form of government and Sections 19, 20, and 21 governing elections. These sections of the Charter provide that there shall be nine councilmen; that the City is divided into six districts ("as nearly equal in population as is practicable," which will be rearranged "not oftener than once each two years" to keep the populations of each district as equal as practicable) known as Districts A, B, C, D, E, and F; and that the council candidates for six Places, numbered 1, 2, 3, 4, 5, and 6, shall reside in Districts A, B, C, D, E, and F, respectively; and that candidates for the remaining three Places, numbered 7, 8, and 9, may reside in any portion of the City.

Section 21 of the Charter provides, in pertinent part:

"All members of the City Council shall be

elected by a vote of the qualified voters of the City of Dallas at large. All qualified voters in the city shall be entitled to vote for candidates for each place number. The candidate for Councilman receiving a majority of all votes cast as provided in Section 20 hereof, for the position of Councilman under the place number under which his name appears shall be declared the duly elected Councilman to hold said position."

The results of the election on April 4, 1967, regarding plaintiff's race for Place 3, District C, disclose that he lost city-wide by a vote of 14,429 to 9,009, but he was the choice of the voters in his District C by a vote of 2,192 to 1,287. The six districts of the City of Dallas were populated, as of 1964, as follows:

District	A	139,349
District	B	140,221
District	C	138,288
District	D	139,138
District	E	137,235
District	F	135,184

In 1967, there was substantial equality of population among the six districts —"approximately 140,000 persons" in each district.

At this point, the plaintiff would have been entitled to no relief under the decisions of the Supreme Court in *Fortson v. Dorsey,* 379 U.S. 433

(1965), and *Dusch v. Davis,* 387 U.S. 112, 87 S.Ct. 1554 (1967).[1]

Plaintiff then amended his complaint by adding the further allegation:

> "That the present plan of electing City Councilmen pursuant to said Section 21 of the Charter of The City of Dallas has resulted in a scheme to perpetuate and preserve control of the City Council of the City of Dallas by a group known as the Citizens Charter Association."

Plaintiff argues that "the Dallas election law does not pass constitutional muster because the people are effectively denied representation by an invidious discrimination against their choices."

Both plaintiff and defendant filed motions for summary judgment.

In accordance with pretrial orders and directions made and given at pretrial conferences on December 7, 1967, and January 23, 1968, plaintiff made and filed a full and complete offer of proof of the facts he expected to prove, entitled "Plaintiff's List of Witnesses" and "Facts to Be Developed from the Foregoing Listed Witnesses." Thereupon, "Defend-

---

[1] Indeed, under *Moody* v. *Flowers,* 387 U.S. 97, 87 S.Ct. 1544 (1967), a three-judge court was not authorized under 28 U.S.C. 2281 to determine this matter. The Supreme Court's opinion stated that a three-judge court is properly convened "only when a state statute of general and statewide application is sought to be enjoined" and "the fact that the charter was enacted into law does not change the result." 387 U.S. 101-103; 87 S.Ct. 1548-49. To the same effect, *Dusch* v. *Davis,* 387 U.S. 112, 87 S.Ct. 1554 (1967).

ant's Answer to Plaintiff's List of Witnesses and Offered Testimony" was filed, denying the matters contained in plaintiff's offer of proof.

Plaintiff asserts that his offer of proof shows "controlling majorities in all but two of the nineteen city administrations since 1931, the date Section 21 was adopted, have been nominated and elected by the Citizens Charter Association," and that such offer of proof shows that since 1939 "in . . . fifteen elections, . . . 135 CCA candidates [have] run against 210 independents with the CCA candidates consistently winning control of the Council. In that time only 4 of the 210 independents were successful."

Plaintiff's offer of proof also includes a variety of charges, conclusions and color words which, in our opinion, are irrelevant and immaterial to the issue of whether Section 21 of the City Charter meets the constitutional test of "invidious discrimination" involved in this action.[2]

At the pretrial conference on January 23, 1968, with the consent of counsel, the Court heard and considered the motions of both parties for summary judgment and determined from the pleadings, stipulations of the parties, and offers of proof by both parties that there is no genuine issue as to any material fact and that the defendant is entitled to judgment as a matter of law; that plaintiff's

---

[2] *Reynolds* v. *Sims*, 377 U.S. 533, 84 S.Ct. 1362 (1964).

motion for summary judgment should be denied; and that defendant's motion for summary judgment should be granted.

In *Reynolds v. Sims,* 377 U.S. 533, 84 S.Ct. 1362 (1964) (regarding elections of state legislators), the Supreme Court formulated the constitutional test under the Equal Protection Clause applicable to cases involving the principle of one-person-one-vote, of whether there is an "invidious discrimination." Mr. Chief Justice Warren's opinion states:

> "Legislators represent people, not trees or acres. Legislators are elected by voters, not farms or cities or economic interests.
>
> * * *
>
> [T]he democratic ideals of equality and majority rule, which have served this Nation so well in the past, are hardly of any less significance for the present and the future." At 562 and 566.

The opinion, at 557, quotes from *Gray v. Sanders,* 372 U.S. 368, 379, 83 S.Ct. 801:

> "Once the geographical unit for which a representative is to be chosen is designated [here, the City of Dallas], all who participate in the election are to have an equal vote — whatever their race, . . . occupation, . . . income, and wherever their home may be in that geographical unit."

The *Reynolds* opinion continues:

> "Political subdivisions of States — counties, cities, or whatever—never were and never have been considered as sovereign entities. Rather, they have been traditionally regarded as subordinate governmental instrumentalities created by the State to assist in the carrying out of state governmental functions. As stated by the Court in *Hunter v. City of Pittsburgh*, 207 U.S. 161, 178 [28 S.Ct. 40, 46, 52 L.Ed. 151], these governmental units are 'created as convenient agencies for exercising such of the governmental powers of the State as may be entrusted to them,' and th e'number, nature and duration of the powers conferred upon [them] . . . and the territory over which they shall be exercised rests in the absolute discretion of the State.'" 377 U.S. at 575.

In *Fortson v. Dorsey*, 379 U.S. 433, 438 (1965), which upheld a residence requirement for the election of state senators from a multi-district county, Mr. Justice Brennan's opinion states:

> ". . . It is not accurate to treat a senator from a multi-district county as the representative of only that district within the county wherein he resides. The statute uses districts in multi-district counties merely as the basis of residence for candidates, not for voting or representation. Each district's senator must be a resident of that district, but since his tenure depends upon the county-wide electorate he must be vigilant to serve the interests of all the people in the county, and not merely those of people in his home district; thus in fact he is the county's and not merely the district's senator. . . ."

The decision in *Dusch v. Davis, supra,* upheld an election plan specifically analogous to the Dallas six-three election plan, except that the boroughs in the City of Virginia Beach "Seven-Four Plan" vary widely (from 733 to 29,048 in population, while in Dallas the populations of the six districts are substantially the same. The opinion of the Court, delivered by Mr. Justice Douglas, quotes from Mr. Justice Brennan's opinion in *Fortson* and says:

> "By analogy the present consolidation plan uses boroughs in the city 'merely as the basis of residence for candidates, not for voting or representation.' He is nonetheless the city's, not the borough's councilman. In *Fortson* there was substantial equality of population in the senatorial districts, while here the population of the boroughs varies widely. If a borough's resident on the council represented in fact only the borough, residence being only a front, different conclusions might follow. But on the assumption that *Reynolds v. Sims* controls, the constitutional test under the Equal Protection Clause is whether there is an 'invidious' discrimination." 387 U.S. at 115-16.

In *Dusch,* the Court had before it the memorandum opinion of the District Court, which noted that in the Democratic primary

> "Opposition existed in only one borough where the defeated candidate, having declared for election from that borough, secured more votes in the particular borough of his residence than the successful candidate . . ."

Mr. Justice Douglas' opinion noted that, "It is obvious that, if the percentage of qualified voters is in accord with the population, Lynnhaven and Bayside, if united in their efforts, could select all 11 councilmen even though the election were at large." The Court quotes from the Memorandum of the District Court:

> "The 'Seven-Four Plan' is not an evasive scheme to avoid the consequences of reapportionment or to perpetuate certain persons in office. The plan does not preserve any controlling influence of the smaller boroughs, but does indicate a desire for intelligent expression of views on subjects relating to agriculture which remains a great economic factor in the welfare of the entire population." *Id.* at 116-17.

The opinion in *Dusch v. Davis, supra,* concludes that:

> "The Seven-Four Plan seems to reflect a detente between urban and rural communities that may be important in resolving the complex problems of the modern megalopolis in relation to the city, the suburbia, and the rural countryside. Finding no invidious discrimination we conclude that the judgment of the Court of Appeals must be and is *Reversed.*" 387 U.S. at 117.

In *Wesberry v. Sanders,* 376 U.S. 1, 7-8, 84 S.Ct. 526 (1964), the Court stated:

> "We hold that, construed in its historical

context, the command of Art. I, § 2, that Representatives be chosen 'by the People of the several States' means that as nearly as is practicable *one man's vote in a congressional election is to be worth as much as another's. This rule is followed automatically . . . when Representatives are chosen as a group on a statewide basis,* as was a widespread practice in the first 50 years of our Nation's history . . ." [Emphasis supplied]

In *Burns v. Richardson,* 384 U.S. 73, 86 S.Ct. 1286 (1966), the Court says:

". . . Where the requirements of *Reynolds v. Sims* are met, apportionment schemes including multi-member districts will constitute an invidious discrimination only if it can be shown that 'designedly or otherwise, a multi-member constituency apportionment scheme, under the circumstances of a particular case, would operate to minimize or cancel out the voting strength of racial or political elements of the voting population.' . . ." At 88.

In *Burns v. Richardson, supra,* Mr. Justice Stewart, concurring, states: "'[T]he Equal Protection Clause demands . . . that . . . the plan must be such as not to permit the systematic frustration of the will of a majority of the electorate of the State.'" At 99.

In *Reed v. Mann,* 237 F.Supp. 22 (N.D. Ga. 1964), Circuit Judge Griffin Bell's opinion says:

". . . And we know of no doctrine of law other than that of inequality on which a claim

> of denial of equal protection or due process under such circumstances can otherwise rest. There is no right *per se* to select representatives from any given size district or unit." At 24-25.

Under the Charter plan, "every voter in the [city] is treated equally." *Id.* at 24.

The *Reed* opinion continues:

> "Whether the selection of commissioners is to be on a district or county wide basis is a matter, in the beginning, of political or governmental policy and judgment. . . . The selection of a system, so long as it is not proscribed by the federal Constitution, is, of course, not the business of the court." At 24.

And, in *Baker v. Carr,* 369 U.S. 186, 259-260, 82 S.Ct. 691 (1962), Mr. Justice Clark states in his concurring opinion:

> ". . . The federal courts are of course not forums for political debate, nor should they resolve themselves into state constitutional conventions or legislative assemblies. Nor should their jurisdiction be exercised in the hope that . . . a declaration . . . may have the direct effect of bringing on legislative action. . . ."

"The [Six-Three] Plan [under attack] makes no distinction on the basis of race, creed, or economic status or location."[3] The election-at-large plan

[3] *Dusch* v. *Davis,* 387 U.S. at 115.

under Section 21 of the City Charter meets the constitutional test under the Equal Protection Clause of "'invidious' discrimination"[4] and is valid.

It is, therefore, the Opinion, Order, and Judgment of the Court and of each of the Judges that the Plaintiff's Motion for Summary Judgment be denied, and that the Defendant's Motion for Summary Judgment be and it is hereby granted, to which action of the Court the plaintiff made due exception.

This Opinion, Order, and Judgment signed and ORDERED ENTERED this 26th day of January, 1968.

/s/ IRVING L. GOLDBERG
United States Circuit Judge

/s/ JOE E. ESTES
United States District Judge

/s/ SARAH T. HUGHES
United States District Judge

[4] *Id.* at 116.

APPENDIX B

Summary of candidates of Citizens Charter Association by elections since 1931:

	C.C.A. Candidates	C.C.A. Candidates Elected
1931	9	9
1933	9	9
1935	9	2
1937	9	5*
1939	9	9
1941	9	9
1943	9	9
1945	9	9
1947	9	8
1949	9	9
1951	9	9
1953	9	9
1955	9	9
1957	9	9
1959	9	8
1961	9	6
1963	8**	6
1965	9	8
1967	9	9

* C.C.A. had a majority vote, but it would take one more vote to overrule certain subordinate bodies.

** There are nine places on the City Council but in 1963 the C.C.A. did not oppose the independent running for Mayor wo was a member of The Dallas Citizens Council.

Sources: City records, microfilms of newspapers and literature published by the Citizens Charter Association.

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No. 1317

In the

Supreme Court of the United States

OCTOBER TERM, 1967

MAX B. GOLDBLATT,
Appellant,

v.

THE CITY OF DALLAS,
Appellee.

On Appeal from the United States District Court for the Northern District of Texas, Dallas Division

MOTION TO DISMISS AND IN THE ALTERNATIVE TO AFFIRM

N. ALEX BICKLEY,
TED P. MACMASTER,
JERRY WILLIAMSON,
501 City Hall,
Dallas, Texas 75201,
H. P. KUCERA,
2200 Fidelity Union Tower,
Dallas, Texas 75201,
Attorneys for Appellee, City of Dallas.

P. O. BOX 10543 — 2863 VALDINA STREET — DALLAS — ME 1-3130
THE WARLICK PRESS DIVISION, STECK-WARLICK CO.

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MOTION TO DISMISS AND IN THE ALTERNATIVE TO AFFIRM

To the Honorable Supreme Court of the United States:

Appellee in the above-entitled case moves to dismiss and in the alternative to affirm on the grounds that this Court does not have jurisdiction of the appeal, and that the questions presented are so unsubstantial as not to need further argument.

OPINION BELOW

The opinion of the United States District Court for the Northern District of Texas, Dallas Division, acting both in a three-judge and single-judge capacity, is reported at 279 F. Supp. 106 (1967) and is attached as Appendix "A" to the Jurisdictional Statement of the Appellant herein.

JURISDICTION

This action was brought by the Appellant in the United States District Court for the Northern District of Texas, Dallas Division, attacking Section 21 of the Dallas City Charter as being unconstitutional. The Charter was voted by the citizens of Dallas and is applicable only to the City of Dallas. It has no state-wide application. Being of a purely local nature, it is not a matter that was required to be heard by a three-judge court pursuant to 28 USC § 1252, nor is it a matter under which there would be a direct appeal to this Court under 28 USC § 1253. The questions presented did not require adjudication by a District Court composed of three judges in accordance with 28 USC § 2281, which applies only to State statutes by restraining the action of any officer of such State in enforcing said statute or the order of an administrative board or commission acting under State statutes.

QUESTIONS PRESENTED

In addition to the question of the jurisdiction of this Court to hear this matter on direct appeal, if heard, the Court is faced with the following question:

(1) Whether Section 21 of Chapter IV of the Dallas City Charter is unconstitutional and creates an invid-

ious discrimination against the right of the voters of the City of Dallas, contrary to the Equal Protection Clause of the Constitution of the United States.

STATUTES INVOLVED

The primary provision involved is Section 21 of Chapter IV of the Dallas City Charter. This involves the application of the Equal Protection Clause of the United States Constitution under the Fourteenth Amendment to this local Charter provision.

STATEMENT OF THE CASE

Max B. Goldblatt, the Appellant herein, was a candidate for the City Council of the City of Dallas from District C, Place 3, in the April 4, 1967, Election. The City Charter provides for the election of nine Councilmen, one of whom shall be the Mayor. Three of these Councilmen live at large and are elected at large. Six of the Councilmen must live in one of the six Districts into which the City is divided, but are elected at large. All of the Districts have a population that is approximately equal.

In the April 4th Election, the Appellant received 2,192 votes in District C, and his opponent received 1,287 votes. In the City-wide polling, the Appellant received 9,009 votes and his opponent received 14,429 votes. Therefore, his opponent was elected to the City Council.

Under the Charter any individual who is a resident and qualified voter of the City can run for the office of City

Councilman, either from the District, or at large. Similarly, under the Charter any group of citizens may organize and sponsor nine candidates or as many as they desire for membership in the governing body. Biannually there have been elections where various organizations from time to time sponsored candidates for places on the City Council. The Citizens Charter Association originally sponsored the council-manager form of government. Upon its adoption, the Association has sponsored candidates for the City Council, although it is not a permanent organization.

These were the facts that were before the Court and that are before this Court. All of the magazine articles and the writings of the newspaper reporters and the writers of books and fiction, certainly cannot form a basis of fact upon which this Court could actually act. These are matters completely outside the record and are completely unsubstantiated. If these are matters to be considered by the Court, then we request permission to file in this Court the many, many articles and news items that have praised the system used in the City of Dallas, but we do not feel that the time has yet arrived for law to be dictated by the newspaper correspondent, or justice to be meted out by fiction.

The record contains a stipulation of the Parties and the matters that were before the Court at the time the injunction was denied.

ARGUMENT

I.

JURISDICTION

28 USC § 2281 provides for a three-judge court when an injunction is sought against the enforcement of a State statute upon the ground that it is unconstitutional. No State statute is involved in this cause. The attack is made on Section 21 of Chapter IV of the Charter of the City of Dallas, which provides the framework of the city government of the City of Dallas and applies only within the city limits of Dallas, has only local application and was adopted by the electorate at an election held within the City.

Where a charter is of local application only and not of state-wide application, the case is not one for a three-judge court. *Dusch v. Davis*, 387 U.S. 112 (1967), *Moody v. Flowers*, 387 U.S. 97 (1967).

In the past where this Court could not hear the matter on its merits, it did preserve the Appellant's proper remedy if the question of jurisdiction "was not obviously settled by prior decisions." *Phillips v. United States*, 312 U.S. 246, 254 (1941). This matter was completely settled by the decisions of this Court prior to the institution of this action, therefore there could be no sound reason for this Court to enter any order in this cause. *Double Eagle Lubricants, Inc. v. Texas*, 248 F. Supp. 515 (1965); 384 U.S. 434 (Dism. Lack of Jurisdiction); 385 U.S. 890 (Reh. denied). The United States District Court for the Northern District of Texas, Dallas Division, was the proper forum for this case, and it

was a matter for the District Judge alone. The decision of the three-judge court stated that:

> "It is, therefore, the Opinion, Order, and Judgment of the Court and of each of the Judges that the Plaintiff's Motion for Summary Judgment be denied, * * *."

II.

UNSUBSTANTIAL QUESTION

The Appellant in this cause has raised no substantial question. He merely complains of the fact that the City Councilmen of the City of Dallas are elected at large, and that there is a group of interested citizens who have actively supported slates of candidates and these candidates have been elected. Active interest in the government has always been one of the mainstays of the democratic system. To now say that this is not only undesirable but that it creates an unhealthy climate and an invidious discrimination against those who do not take the same interest in their government, is reversing the processes of democracy.

This Court has formulated the Constitutional test under the Equal Protection Clause of the Constitution in cases involving the principle of one-man one-vote. This test has been whether or not there is an "invidious discrimination." *Reynolds v. Sims*, 377 U.S. 533 (1964); *Dusch v. Davis*, *supra*. As was stated in the recent case of *Avery v. Midland County, Texas*, (36 L.W. 4257, April 1, 1968):

> "The Equal Protection Clause does not, of course, require that the State never distinguish between citizens, but only that the distinctions that are made not be arbitrary or invidious. * * *"

Applying the above test, this Court has held that a system identical to that of the City of Dallas meets the constitutional test. Where the City of Dallas has a six-three election plan with six residing in districts and elected at large, and three residing at large and elected at large, the City of Virginia Beach, in the case of *Dusch v. Davis, supra*, had a seven-four plan with seven living in districts and elected at large, and four living at large and elected at large. Their districts or boroughs varied from 733 in population to 29,048. In Dallas the districts are substantially the same. The opinion of Mr. Justice Douglas in this case quoted from Mr. Justice Brennan's opinion in *Fortson v. Dorsey*, 379 U.S. 433 (1965), in these words:

> "By anology the present consolidation plan uses boroughs in the city 'merely as the basis of residence for candidates, not for voting or representation.' He is nonetheless the city's, not the borough's councilman. In *Fortson* there was substantial equality of population in the senatorial districts, while here the population of the boroughs varies widely. If a borough's resident on the council represented in fact only the borough, residence being only a front, different conclusions might follow. But on the assumption that *Reynolds v. Sims* controls, the constitutional test under the Equal Protection Clause is whether there is an 'invidious' discrimination. * * *" 387 U.S. at 115-16

Again, in the recent case of *Avery v. Midland County, Texas, supra*, this Court stated that:

> "* * * the Constitution and this Court are not roadblocks in the path of innovation, experiment, and development among units of local government. * * *"

but has stated further:

> "* * * Our decision today is only that the Constitution imposes one ground rule for the development of arrangements of local government: a requirement that units with general governmental powers over an entire geographic area not be apportioned among single-member districts of substantially unequal population."

This same type of system was approved again in the case of *Reynolds v. Sims, supra,* at page 579, in these words:

> "* * * Single-Member districts may be the rule in one State, while another State might desire to achieve some flexibility by creating multi-member or floterial districts. Whatever the means of accomplishment, the overriding objective must be substantial equality of population among the various districts, so that the vote of any citizen is approximately equal in weight to that of any other citizen in the State."

It was also stated in the *Reynolds* case, *supra,* at page 566, that it is not the intent of the one-man one-vote rule to give to any particular minority, a majority control of the legislative body. There are other ways of protecting these minorities:

> "* * * Our constitutional system amply provides for the protection of minorities by means other than giving them majority control of state legislatures. And the democratic ideals of equality and majority rule, which have served this Nation so well in the past, are hardly of any less significance for the present and the future."

The Courts in years past have stated that the system employed by the City of Dallas is automatically a compliance

with the demands of the Constitution. In *Wesberry v. Sanders*, 376 U.S. 1, 7-8, (1964), the Court stated:

> "We hold that, construed in its historical context, the command of Art. I, §2, that Representatives be chosen 'by the People of the several States' means that as nearly as is practicable *one man's vote in a congressional election is to be worth as much as another's. This rule is followed automatically, * * * when Representatives are chosen as a group on a statewide basis,* as was a widespread practice in the first 50 years of our Nation's history." (Emphasis supplied)

In truth and in fact there is no system which guarantees more clearly to an individual that his vote shall be the equal of every other man's vote than the system that is employed by the City of Dallas. Each voter gets to vote on each and every Councilman. The size of the district and whether selection is to be by district or by general vote, is a matter that is to be determined by the local government so long as it does not disenfranchise or invidiously discriminate against any particular group. *Reed v. Mann*, 237 F. Supp. 22 (N.D. Ga. 1964). This same reasoning was upheld in the *Fortson v. Dorsey* case, *supra*, when the Court stated:

> "* * * The equal protection argument is focused solely upon the question whether county-wide voting in the seven multi-district counties results in denying the residents therein a vote 'approximately equal in weight to that of' voters resident in the single-member constituencies. Contrary to the District Court, we cannot say that it does. * * *" (379 U.S. at 436-437)

In fact, the Court stated that one who is elected at large is a representative of all of the people and not just the district wherein he resides:

> "* * * *It is not accurate to treat a senator from a multi-district county as the representative of only that district within the county wherein he resides.* The statute uses districts in multi-district counties merely as the basis of residence for candidates, not for voting or representation. Each district's senator must be a resident of that district, but since his tenure depends upon the county-wide electorate *he must be vigilant to serve the interests of all the people in the county*, and not merely those of people in his home district; thus in fact he is the county's and not merely the district's senator. * * *" (Emphasis supplied) (379 U.S. at 438)

Since this Court has previously held that it is the intent of the Constitution of the United States that one man's vote shall be equal to another's, then the Charter of the City of Dallas may be pointed to as the document that most nearly grants this equality.

CONCLUSION

We respectfully submit that this Court does not have jurisdiction of the Appellant's direct appeal from the decision of the three-judge court and therefore should be dismissed for lack of jurisdiction. In the alternative, if this Court holds that the three-judge court would have jurisdiction of Appellant's complaint, it is respectfully submitted that Appellant presents no substantial question for a decision by this Court and that the Judgment and Decree of the court below

should be affirmed on the authority of the recently adjudicated cases decided by this Court.

Respectfully submitted,

N. ALEX BICKLEY,
TED P. MACMASTER,
JERRY WILLIAMSON,
501 City Hall,
Dallas, Texas 75201,

H. P. KUCERA,
2200 Fidelity Union Tower,
Dallas, Texas 75201,

By _____
Attorneys for Appellee,
City of Dallas.

CERTIFICATE OF SERVICE

The undersigned attorney for Appellee City of Dallas certifies that a copy of Appellee's Motion to Dismiss and in the Alternative to Affirm, has been served upon the Appellant by delivering a copy of said Motion to:

Joseph A. Devany
1911 First National Bank
Building
Dallas Texas 75202,
Attorney for Appellant,
Max B. Goldblatt

_____
Attorneys for Appellee,
City of Dallas.